



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Claude A. Williams
Chairman and Executive Director
Texas Unemployment Compensation Commission
Austin, Texas

Dear Sir:

Opinion No. O-4306

Re: Whether or not certain industrial insurance agents under written contract with an insurance company are in employment of said company within the meaning of the Texas Unemployment Compensation Act, same being Article 5221b-17 (g) (1), Vernon's Annotated Civil Statutes.

We received your letter requesting our opinion on the above captioned question. We also received from you a copy of a contract and other documents pertaining to this question.

As we understand your request, your question is restricted to the period of time between April 1, 1939, and October 1, 1941, during which time the Unemployment Act contained no specific provision exempting insurance agents from the terms of the Act. We assume further that the contracts furnished this department were in effect during the period in question and this opinion is based upon that assumption.

We quote several provisions from the contract, which we think are controlling of the question at hand:

"In consideration of my appointment as agent of the . . . Company from week to week upon the terms herein contained, I do hereby agree as follows:

"To canvass for insurance and collect premiums during each and every week on the policies of said Company obtained by or assigned to me, to aid in the proper adjustment of claims on my debit, and to do

any and all other things the Company is authorized by its charter to do that might be required of me from time to time by the Company or its manager, and to engage in no other business during the time of this employment.

"To pay over each day, or at the time indicated by the manager of the district in which I work, all moneys collected by me to the manager or to any other person designated by the manager, unless otherwise ordered by the . . . Company. No money or moneys shall be retained by me out of any collections made by me for any purpose. The total sums collected shall be turned over to the manager or person designated by the manager or by the Company. My compensation shall be paid to me directly by the Company through its manager or other proper officers. Under the terms of this contract, the agent agrees to keep true records of the business in the books and on the forms provided by the Company.

"And it is further understood and agreed that I am to be directly responsible for the failure, through any cause whatsoever, to pay over moneys collected by me in the manner above described.

"To make upon the forms provided by the Company and to forward it each time designated by the manager, with my account or report, a list of all policies on which the premiums are four weeks in arrears. The agent's failure to do so shall cause the agent to be liable to the Company, and he shall pay over to it, as if collected by him, all premiums in arrears more than four weeks. But this penalty is not to be taken as a waiver by the Company of the agent's agreement to report or forward a list of all policies four weeks or more in arrears, and is not to be taken in lieu of, but additional to the penalty for disobedience of the rules of the Company and the violation of this contract.

"To take no application except upon the lives personally seen by the agent at the time the application is made and believed by him to be in sound health. The failure of the agent to see the person on whom he is submitting an application for insurance will terminate and cancel this contract.

"The agent agrees to comply with all the instructions, rules and regulations of the Company in force at this time or that may hereafter be placed in force. The agent acknowledges receipt of the agent's instruction book, and accepts the terms and conditions thereof and agrees to be governed in all his relations with the Company by the instructions it contains."

"The total amount of weekly premiums in the Life Policy Register, after deducting the total weekly premium in the Lapse Policy Register are to be debited to my account on Monday of each and every week. This amount shall be known as the 'Collectible Debit', as is hereinafter made a basis of my compensation. This Collectible Debit shall be considered as having been absolutely received by me for the Company, and the Company shall not be required to prove that the agent actually received the premiums or any of them, but the agent is to be charged with all premiums in advance pay and to be credited with such arrears not to exceed four weeks on any policy as may be established on the debit assigned to the agent. This clause is not to be taken as a waiver of or as affecting any rights of the Company otherwise secured by this agreement."

"The business embraced in this agency shall belong to the Company and the agent shall not transfer or sell same. The agent agrees not to accept any compensation from his successor or other person for the transfer of the business of his agency or any part of it."

"This agreement may be revoked and/or terminated by the Company upon one day's notice. Such compensation as shall have accrued and become payable up to the date of my resignation or the termination of this agreement by the Company shall be in full payment and satisfaction of all my services to the Company, and my compensation under this agreement and of all claims upon the Company."

Article 5221b-17 (g) (1), Vernon's Annotated Civil Statutes, defines employment as follows:

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"'Employment' subject to the other provisions of this subsection, means service, including service in interstate commerce, performed for wages, or under any contract of hire, written or oral, express or implied, provided that any services performed by an individual for wages shall be deemed to be employment subject to this Act unless and until it is shown to the satisfaction of the Commission that such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact."

Since said contract binds the agent to comply with all the instructions, rules and regulations in force at the time of the making of the contract as well as all instructions, rules and regulations that may thereafter be promulgated by the insurance company, it is inescapable that the insurance company possesses the right of complete control over the performance of service rendered by said agents.

It is our opinion that said agents are, as a matter of law, in employment of the insurance company within the meaning of the above quoted statute.

We trust that we have satisfactorily answered your question.

Yours very truly

APPROVED APR. 24, 1942

ATTORNEY GENERAL OF TEXAS

/s/ Grover Sellers

By

FIRST ASSISTANT
ATTORNEY GENERAL

/s/ Lee Shoptaw
Assistant

LS:db

APPROVED OPINION COMMITTEE BY BWB CHAIRMAN